

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOEL RHODES,
Plaintiff,

v.

Case No. 12-CV-0452

MILWAUKEE COUNTY,
SGT. KERRI MCKENZIE, and
JOHN DOES,
Defendants,

DECISION AND ORDER

Defendants filed their motion for summary judgment on October 31, 2013. Plaintiff did not respond to the motion. Finally, on January 21, 2014, I ordered plaintiff to file a response by February 14, 2014. I advised plaintiff that failure to file a response by that date may result in the dismissal of this action for failure to prosecute. The court received a response from plaintiff, along with a motion to strike defendants' proposed findings of fact. In turn, defendants have filed a motion to strike plaintiff's materials opposing defendants' summary judgment.

Plaintiff asks me to strike defendants' proposed findings of fact as irrelevant and immaterial pursuant to Federal Rules of Evidence 401 and/or 403. Plaintiff believes some of the information offered by defendants is irrelevant, prejudicial, confusing, and misleading. It is for me to decide upon review of defendants' motion for summary judgment what is relevant to the motion. Motions to strike are disfavored under Civil Local Rule 56(b)(9), and I will not undertake a substantive review of the merits of defendants' motion just to keep facts out of the record that plaintiff does not want me to consider. When deciding defendants' motion for summary judgment, I will evaluate defendants'

proposed findings of fact and determine whether they are supported by admissible evidence and relevant to the resolution of the motion. At this time, I will deny plaintiff's motion strike.

Defendants' motion to strike is different. They object to the form of plaintiff's response, which includes 257 additional proposed findings of fact. Civil Local Rule 56(b)(2)(B)(ii) provides that "[a] non-moving party may not file more than 100 separately-numbered statements of additional facts." Plaintiff's proposed findings of fact are too onerous for defendants to respond to and outside what the court considers a reasonable response to a motion for summary judgment. I will grant defendants' motion and strike plaintiff's proposed findings of fact. I will provide plaintiff the opportunity to reduce his proposed findings of fact to the 100 allowed by the Civil Local Rules. Plaintiff also may revise his response to defendants' proposed findings of fact and his response brief since both cite to his stricken proposed findings of fact. I caution plaintiff to carefully consider what is relevant to his response to defendants' motion for summary judgment. Simply grouping proposed findings of fact together to create less of them is not acceptable.

Plaintiff shall file his revised response to defendants' motion for summary judgment on or before Friday, April 24, 2014. Pursuant to Civil Local Rule 56(b)(3), defendants shall have 14 days after the service of plaintiff's responsive materials to file their reply materials.

THEREFORE, IT IS ORDERED that plaintiff's motion to strike defendants' proposed findings of fact (Docket #77) is **DENIED**.

IT IS FURTHER ORDERED that defendants' motion to strike plaintiff's materials opposing defendants' summary judgment motion (Docket #80) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall file his revised response to defendants' motion for summary judgment on or before **Friday, April 24, 2014**.

Dated at Milwaukee, Wisconsin, this 24th day of March, 2014.

s/ Lynn Adelman

LYNN ADELMAN
District Judge